

APPENDIX A

CONTRIBUTION AGREEMENT

CONTRIBUTION AGREEMENT

Dated as of _____, 2000

between

COMMONWEALTH EDISON COMPANY

and

_____ GENCO, INC.

TABLE OF CONTENTS

	Page
ARTICLE I: DEFINITIONS	1
1.1 Defined Terms	1
1.2 Interpretation	6
1.3 Captions	7
ARTICLE II: CONTRIBUTION OF ASSETS	7
2.1 Contribution of Assets	7
2.2 Excluded Assets	8
2.3 Transferee's Liabilities	9
2.4 Excluded Liabilities	11
2.5 Assignability and Consents	12
2.6 Illinois Responsible Property Transfer Act	12
ARTICLE III: CLOSING	13
3.1 Closing	13
3.2 Documents to be Delivered by Transferor	14
3.3 Documents to be Delivered by Transferee	14
3.4 Other Documents to be Delivered	15
ARTICLE IV: REPRESENTATIONS AND WARRANTIES	15
4.1 Representations and Warranties of Transferor	15
4.2 Representations and Warranties of Transferee	16
ARTICLE V: CONDITIONS TO CLOSING	16
5.1 Conditions to Parties' Obligations	16
5.2 Conditions to Transferee's Obligations	17
5.3 Conditions to Transferor's Obligations	17
ARTICLE VI: OTHER COVENANTS	18
6.1 Employee Matters	18
6.2 Maintenance of, and Access to, Records	19
6.3 Expenses; Transfer Taxes	19
6.4 Bulk Transfer Laws	19
6.5 Regulatory Approvals	19
6.6 Decommissioning Costs	19
ARTICLE VII: TERMINATION	19
7.1 Termination	20
7.2 Effect of Termination	20

ARTICLE VIII: INDEMNIFICATION	20
8.1 Indemnification by Transferee	20
8.2 Indemnification by Transferor	20
8.3 Notice of Claims; Right to Participate in and Defend Third Party Claims	20
8.4 Time Limitations on Claims for Indemnification	21

ARTICLE IX: MISCELLANEOUS	22
9.1 Amendments	22
9.2 Schedules	22
9.3 Entire Agreement	22
9.4 Governing Law	22
9.5 Notices	22
9.6 Counterparts	23
9.7 Assignment	23
9.8 Waivers	23
9.9 Third Parties	23
9.10 Schedules and Exhibits	23
9.11 Remedies Not Exclusive	23
9.12 Further Assurances	24

SCHEDULES

Schedule 2.1(a)	(Transferred Land)
Schedule 2.1(c)	(Specific Permits, Licenses and Variances)
Schedule 2.1(e)	(Assigned PPAs)
Schedule 2.1(f)(1)	(Assigned Leases and Licenses)
Schedule 2.1(f)(2)	(Assigned Fuel Contracts)
Schedule 2.1(f)(3)	(Assigned Other Contracts)
Schedule 2.1(f)(4)	(Causes of Action)
Schedule 2.1(h)	(Nuclear Insurance)
Schedule 2.2(e)	(Other Excluded Assets)
Schedule 2.5(a)	(Required Consents)

EXHIBITS:

3.4(a)	Form of Power Purchase Agreement
3.4(b)	Form of Facilities, Interconnection and Easement Agreement
3.4(c)	Form of Facilities and Easement Agreement (Zion Station)

CONTRIBUTION AGREEMENT

THIS CONTRIBUTION AGREEMENT (this "*Agreement*") dated as of _____, 2000 between Commonwealth Edison Company, an Illinois corporation ("*Transferor*"), and _____ Genco, Inc., a [Pennsylvania] corporation ("*Transferee*").

W I T N E S S E T H:

WHEREAS, Transferor operates nuclear generating plants and related facilities for the generation of electricity, which it desires to contribute to Transferee; and

WHEREAS, Transferee desires to receive such assets and related liabilities from Transferor and to conduct an electricity generation business therewith;

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained and other good and valuable consideration had and received, the parties agree as follows:

ARTICLE I: DEFINITIONS

1.1 Defined Terms. In addition to the terms defined elsewhere in this Agreement (which terms shall have the respective meanings there so specified), the following capitalized terms shall have the respective meanings set forth below:

"*Affiliate*" shall mean any Person that directly, or indirectly through one or more Persons, controls, is controlled by, or is under common control with, the Person specified or, directly or indirectly, is related to or otherwise associated with any such Person or entity.

"*Collective Bargaining Agreement*" means, as specifically applicable to the relevant transferred assets, the express language contained in those portions of (a) the Collective Bargaining Agreement between Transferor and Local 15 of the IBEW (August 25, 1997 to March 31, 2001) (the "*CBA*"), (b) the separately bound 140-page Supplement to Collective Bargaining Agreement Memorandum and Letters (which contains twenty memorandums and letters), the Supplemental Agreements governing the provision of pension, 401(k) and welfare benefit plans (including medical, dental, vision, flexible spending account, disability and life insurance), (c) the agreements expressly referred to in the CBA and (d) any other agreements between Transferor and Local 15 of the IBEW.

"*Commercially Reasonable Efforts*" means efforts by a party to perform the particular obligation under this Agreement that do not require such party to expend any funds other than expenditures which are customary and reasonable in transactions of the kind and nature contemplated by this Agreement in order for such party to satisfy such obligation under this Agreement.

"Consents" means (i) all consents, approvals or authorizations relating to the Assets, including contracts, permits and lease agreements (but excluding leases involving future payments of less than \$1,000,000 in the aggregate), which are required in connection with the transfer of the Assets described herein and the failure of which to be obtained would have a material and adverse effect on the ownership, use, operation or condition of the Assets, taken as a whole, and (ii) the items listed in Schedule 2.5(a) (Required Consents).

"Decommissioning Costs" shall mean "decommissioning costs" as defined in 220 ILCS 5/8-508.1(a)(2).

"Decommissioning Trusts" mean the trusts established under the Trust Agreement dated December 8, 1988, as amended (Tax Qualified Decommissioning Trust) between Transferor and The Northern Trust Company and the Trust Agreement dated December 8, 1988, as amended (Non-Tax Qualified Decommissioning Trust) between Transferor and The Northern Trust Company.

"Distribution Easement Area" shall mean the portion of the Transferred Land, if any, identified by the parties prior to the Closing as the "distribution easement area."

"Distribution Excluded Assets" means all fixtures, personal property and improvements located on the Distribution Easement Area that form a part of or are related to the operation of the transmission, distribution or communications systems of Transferor (excluding any transmission and distribution equipment and facilities located in the Distribution Easement Area and identified by the parties pursuant to Section 2.1(d) (Contribution of Assets – Personal Property)), including overhead and underground communications and electrical transmission and distribution lines (whether consisting of one circuit or more than one circuit) and other overhead and underground transmission, distribution, communication and related facilities and structures, including towers, microwave towers (and related facilities and equipment), pole structures, poles (and any and all foundations therefor), wires, cables, conduits, cooling oil, gas and other cooling medium, pipes, ducts, pumps, controls, switches, relays, circuit breakers, monitoring devices, fiber optic cable and facilities, counterpoise, anchors, ground grid, cathodic protection equipment, manholes, transformers, pedestals, and necessary fixtures, conductors and appurtenances attached thereto.

"Employment Laws" means any applicable Requirements of Laws, permits, orders or published decisions of Governmental Authorities relating to: (i) any aspect of employment or (ii) employee benefits, including those matters governed by the Age Discrimination in Employment Act of 1967 (29 U.S.C. § 621 et seq.), the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Civil Rights Act of 1964 (42 U.S.C. § 2000e, including Title VII thereunder, and as amended by the Civil Rights Act of 1991), the Employment Retirement Income Security Act of 1974 (29 U.S.C. § 1001 et seq.), the Equal Employment Act of 1972 (42 U.S.C. § 2000e et seq.), the Equal Pay Act of 1963 (29 U.S.C. § 206), the Fair Labor Standards Act of 1938 (29 U.S.C. § 201 et

seq.), the Family and Medical Leave Act of 1993 (29 U.S.C. § 260 et seq.), the Immigration Reform and Control Act of 1986 (8 U.S.C. § 1324a et seq.), the Labor Management Relations Act (29 U.S.C. § 141 et seq.), the National Labor Relations Act (29 U.S.C. § 151 et seq.), the Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et seq.), the Older Workers Benefit Protection Act (29 U.S.C. § 621 et seq.), the Pregnancy Discrimination Act (42 U.S.C. § 2000e(k)), the Privacy Act of 1974 (5 U.S.C. § 552a), the Social Security Act (42 U.S.C. § 301 et seq.) and the Worker Adjustment and Retraining Notification Act (29 U.S.C. § 2101 et seq.), and all state counterpart statutes.

"Environmental Conditions" means the presence of Hazardous Substances on, over, under or about the Transferred Real Property or any portion thereof or other real property subject to an Assigned Lease, or in soil, sediment, surface water or groundwater at the Transferred Real Property or any portion thereof or other real property subject to an Assigned Lease, whether occurring before or after the Closing, and including any migration of such Hazardous Substances either before or after the Closing, including migration to a location off the Transferred Real Property or other real property subject to an Assigned Lease. Environmental Conditions include any Hazardous Substances present in, on, or incorporated into any drums, equipment or debris that are or were discarded or abandoned or buried at the Transferred Real Property or any portion thereof or other real property subject to an Assigned Lease prior to or after the Closing.

"Environmental Laws" means any applicable Requirements of Laws, permits, orders or published decisions of Governmental Authorities relating to: (i) air emissions, hazardous materials, storage, use and release to the environment of Hazardous Substances, generation, treatment, storage, and disposal of hazardous wastes, wastewater discharges and similar environmental matters or (ii) the impact of the matters described in the preceding clause upon human health or the environment, including those matters governed by the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), the Oil Pollution Act (33 U.S.C. § 2701 et seq.), the Occupational Safety and Health Act (29 U.S.C. § 651 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 et seq.), and the Atomic Energy Act (42 U.S.C. § 2011 et seq.), and all state counterpart statutes.

"Facilities" means, collectively, the land described on Schedule 2.1(a) (Transferred Land), the Transferred Improvements and the tangible personal property described in Section 2.1(d) (Contribution of Assets-Personal Property).

"Governmental Authority" means any foreign, federal, state, local or other governmental authority or regulatory agency, commission, department, or other governmental subdivision, court, tribunal or body, but excluding Transferee and any subsequent owner of the Facilities (if otherwise a Governmental Authority under this definition).

"Grant Deeds" means quitclaim deeds transferring the Transferred Real Property from Transferor to Transferee in form and substance satisfactory to the parties.

"Hazardous Substances" means any chemical, material or substance that is listed or regulated under applicable Environmental Laws as a "hazardous" or "toxic" substance or waste, or as a "contaminant", or is otherwise listed or regulated, or for which liability or standards of care are imposed under applicable Environmental Laws, including, for purposes of this Agreement, coal combustion byproducts, petroleum products, asbestos, polychlorinated biphenyls and similar substances and materials.

"IBEW" means the International Brotherhood of Electrical Workers.

"ICC" means the Illinois Commerce Commission.

"Mortgage" means the Mortgage dated July 1, 1923, as amended and supplemented, between Transferor and the Trustees named therein.

"Permitted Encumbrances" means, collectively: (i) liens, charges, encumbrances and exceptions for taxes and other governmental charges and assessments (including special assessments) that are not yet due and payable; (ii) other liens, charges, encumbrances or title exceptions or imperfections with respect to any of the Assets; (iii) all leases, licenses and occupancy and/or use agreements affecting the Assets (or any portion thereof) (including those leases, licenses and occupancy and/or use agreements that constitute an Assigned Lease or an Assigned Contract) whether or not recorded against the Transferred Real Property; (iv) all matters and exceptions set forth in any title reports or commitments relating to the Transferred Real Property that have been prepared in connection with the transactions contemplated herein and which have been delivered by Transferor to Transferee prior to Closing; (v) liens, charges, encumbrances or title exceptions or imperfections with respect to the Assets created by or resulting from the acts or omissions of Transferee or any of its Affiliates, employees, officers, directors, agents, representatives, contractors, invitees or licensees; (vi) liens, charges, encumbrances and/or title exceptions or imperfections created by any of the documents to be executed in connection with the Closing or this Agreement (including any reservations, easements, restrictions, covenants and other matters set forth in the Grant Deeds) whether prior to, at or after the Closing; (vii) all matters shown on or referenced in the surveys described in Section 3.2(h) (Documents to be Delivered by Transferor); (viii) local, county, state and federal laws, ordinances or governmental regulations, including building and zoning laws, ordinances and regulations now or hereafter in effect relating to the Assets; and (ix) any and all service contracts and other agreements affecting the Assets as of the date hereof (including the Assigned Contracts and the Assigned Leases), and any and all service contracts and other agreements entered into after the date hereof, in each case, to the extent in effect as of the Closing. Notwithstanding the foregoing, for purposes of this Agreement, the lien of the Mortgage shall not be a Permitted Encumbrance.

"Off-Site Disposal Location" means any third party off-site disposal location utilized by Transferor in the normal course of business prior to the Closing for the

treatment, disposal, storage, discharge or recycling of Hazardous Substances or other materials generated by the Facilities (other than radioactive materials); but, for the avoidance of doubt, shall not include any disposal site located on or beneath the Transferred Real Property or on or beneath other real property subject to an Assigned Lease.

"Person" means an individual, partnership, joint venture, corporation, limited liability company, trust, association or unincorporated organization, or any Governmental Authority.

"Remediation" means any or all of the following activities to the extent they relate to or arise from the presence of an Environmental Condition and are required to be addressed either as a requirement of Environmental Laws or as a result of a claim or demand of a third party or Governmental Authority: (i) monitoring, investigation, cleanup, containment, remediation, removal, mitigation, response or restoration work required by Environmental Laws, (ii) obtaining any permits, consents, approvals or authorizations of any Governmental Authority necessary to conduct any such work, (iii) preparing and implementing any plans or studies for such work, (iv) where required or desired, obtaining a written notice from a Governmental Authority with jurisdiction over the Assets or any portion thereof under Environmental Laws that no material additional work is required by such Governmental Authority and (v) any other activities reasonably necessary or appropriate or required under Environmental Laws to address or mitigate such Environmental Condition.

"Requirements of Laws" means any foreign, federal, state, county or local laws, statutes, regulations, rules, codes or ordinances enacted, adopted, issued or promulgated by any Governmental Authority.

"Stations" means the generating facilities known as Braidwood Station, Byron Station, Dresden Station, LaSalle County Station, Quad Cities Station and Zion Station.

"Switchyard" shall mean the land comprising a portion of the Transferred Land and commonly known as the "switchyard," as identified by the parties prior to the Closing.

"Switchyard Property" shall mean all fixtures, personal property and improvements located on the Switchyard (excluding any personal property on the Switchyard and identified by the parties pursuant to Section 2.1(d) (Contribution of Assets–Personal Property)), including communications, transmission and distribution lines (whether consisting of one circuit or more than one circuit), communication facilities and structures, and facilities and equipment of every kind and nature whatsoever, including all transmission and distribution system facilities and equipment, including poles, conductors, fiber optic communication cables, manholes, circuit breakers, transformers, bus structures, buswork, foundations, duct packages, surface trough, conduit cathodic protection equipment, manual disconnects, motor operated disconnects, circuit switchers, potential transformer devices, current transformers, ground

grid, spare equipment, lightning arrestors, pipe-cable oil systems, coolers, structures, buildings, and all equipment therein.

"Tax" or "Taxes" means all net income, gross income, gross receipts, sales, use, ad valorem, transfer, franchise, profits, license, withholding, payroll, employment, excise, severance, stamp, occupation, premium, property or windfall profits, taxes, customs duties or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest and any penalties, additions to tax or additional amounts imposed by any taxing authority (domestic or foreign).

"Transaction Documents" has the meaning specified in Section 4.1(a) (Representations and Warranties of Transferor–Organization and Standing; Power and Authority).

"Transmission Easement Area" shall mean the portion of the Transferred Land identified by the parties prior to the Closing as the "transmission easement area."

"Transmission Excluded Assets" shall mean all fixtures, personal property and improvements located on the Transmission Easement Area that form a part of or are related to the operation of the transmission, distribution or communications systems of Transferor (excluding any transmission and distribution equipment and facilities located in the Transmission Easement Area and identified by the parties pursuant to Section 2.1(d) (Contribution of Assets – Personal Property)), including all overhead and underground electrical and communications transmission and distribution lines (whether consisting of one circuit or more than one circuit) and other overhead and underground transmission, distribution, communication and related facilities and structures, including towers, microwave towers (and related facilities and equipment), pole structures, poles (and any and all foundations therefor), wires, cables, conduits, cooling oil, gas and other cooling medium, pipes, ducts, pumps, controls, switches, relays, circuit breakers, monitoring devices, fiber optic cable and facilities, counterpoise, anchors, underground ground grid, cathodic protection equipment, manholes, transformers, pedestals, and necessary fixtures, conductors and appurtenances attached thereto.

1.2 Interpretation. In this Agreement, unless a clear contrary intention appears: (a) the singular includes the plural and vice versa; (b) reference to any agreement (including this Agreement), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, to the extent applicable, the terms hereof; (c) reference to any Article, Section, Schedule or Exhibit means such Article, Section, Schedule or Exhibit to this Agreement, and references in any Article, Section, Schedule, Exhibit or definition to any clause means such clause of such Article, Section, Schedule, Exhibit or definition; (d) "hereunder," "hereof," "hereto," "herein" and words of similar import are references to this Agreement as a whole and not to any particular Section or other provision hereof; (e) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term; and (f) reference to any law (including statutes and ordinances) means such law as amended, modified, codified or

reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder.

1.3 Captions. The captions of the various Articles, Sections, Exhibits and Schedules of this Agreement have been inserted only for convenience of reference and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

ARTICLE II: CONTRIBUTION OF ASSETS

2.1 Contribution of Assets. Subject to the Permitted Encumbrances and the terms and conditions of this Agreement, including Section 2.2 (Excluded Assets) and reservations, if any, in the Grant Deeds, Transferor shall contribute, convey, assign, transfer and deliver to Transferee and Transferee shall receive and assume from Transferor, all of Transferor's right, title and interest, if any, in and to the following assets (collectively, "**Assets**") on the Closing Date:

(a) Real Property Rights. Each parcel of real property described or depicted in Schedule 2.1(a) (Transferred Land) (the "**Transferred Land**").

(b) Improvements, Buildings, Structures and Fixtures. The improvements, buildings, structures and fixtures that are located on the Transferred Land or any portion thereof (collectively, the "**Transferred Improvements**" and, together with the Transferred Land, the "**Transferred Real Property**").

(c) Permits, Licenses, Etc. The governmental authorizations, consents, approvals, permits, licenses, orders, exceptions, exemptions or allowances, including applications for any of the foregoing, described in Schedule 2.1(c) (Specific Permits, Licenses and Variances), to the extent transferable.

(d) Personal Property. All machinery, equipment, facilities, vehicles, tools, furniture and other tangible personal property of Transferor that are identified by the parties prior to Closing, and which shall include, in any event, all spent nuclear fuel (wherever located) and all inventories of fuel and spare parts to the extent such are located on the Transferred Real Property or have ordinarily been allocated to the operation or maintenance of the Transferred Real Property and including any such property located on the Switchyard as identified by the parties prior to Closing.

(e) Power Purchase Agreements. The power purchase agreements listed on Schedule 2.1(e) (Assigned PPAs) (collectively, the "**Assigned PPAs**").

(f) Other Assets (1) The leases and licenses of personal property or real property listed on Schedule 2.1(f)(1) (Assigned Leases and Licenses) (collectively, "**Assigned Leases**"); (2) the fuel supply contracts and agreements listed on Schedule 2.1(f)(2) (Assigned Fuel Contracts) (collectively, "**Assigned Fuel Contracts**"); (3) the other contracts, agreements and purchase orders listed

on Schedule 2.1(f)(3) (collectively, "*Assigned Other Contracts*"); and (4) the causes of action of Transferor listed on Schedule 2.1(f)(4) (Causes of Action) (collectively, "*Causes of Action*").

(g) SO₂ Trading Allowances. Future SO₂ trading allowances to the extent owned by Transferor as of the date hereof and transferable.

(h) Insurance. All rights, claims and benefits of Transferor in, to or under all insurance policies listed on Schedule 2.1(h) (Nuclear Insurance), including any predecessor policies as to which a claim is pending as of the Closing Date and any successor or replacement policies as a result of the renewal or replacement of the coverage provided by said policies.

(i) NEIL Membership Interest. Transferor's membership in Nuclear Electric Insurance Limited, a Bermuda company ("*NEIL*"), including any rights to receive the accumulated surplus of NEIL in respect of such membership interest and any distributions in respect of such membership interest;

(j) Decommissioning Trust Assets. (1) All assets (including investments) held in the Decommissioning Trusts and (2) all funds collected, or to be collected, from ratepayers in respect of Decommissioning Costs as provided in Section 6.6 (Decommissioning Costs).

(j) Records. The books, records, documents, drawings, reports, operating data and similar items of Transferor relating directly and specifically to the aforementioned assets.

2.2 Excluded Assets. Notwithstanding anything to the contrary contained herein (except as may be provided in Section 3.2(k) (Documents to be Delivered by Transferor)), nothing in this Agreement will constitute or be construed as conferring on Transferee, and Transferee is not receiving, any right, title or interest in or to the following assets, all of the following assets being specifically excluded from the contribution and transfer of assets contemplated by this Agreement (collectively, the "*Excluded Assets*"):

(a) Switchyard Property. All Switchyard Property;

(b) Transmission Assets. All Transmission Excluded Assets;

(c) Distribution Assets. All Distribution Excluded Assets;

(d) Other Excluded Assets. The assets (including contracts) listed or described on Schedule 2.2(e) (Other Excluded Assets);

(e) Trademarks and Trade Names. The names "Commonwealth Edison Company" or "ComEd";

(f) Employee Benefit Assets. Any assets of the ComEd Pension Plan, the Commonwealth Edison Employees' Benefit Trust, the Commonwealth Edison Employees' Benefit Trust for Management Employees or the Commonwealth Edison Employees' Benefit Trust for Union Employees;

(g) Causes of Action. Except as provided in Section 2.1(f)(4) (Contribution of Assets—Other Assets) and Section 2.1(h) (Contribution of Assets—Insurance), any causes of action against a third Person relating to the period prior to the Closing Date; and

(h) Other Exclusions. Any properties, assets, business, operation, subsidiary or division of Transferor or any Affiliate of Transferor, whether tangible or intangible, real, personal or mixed, not set forth in Section 2.1 (Contribution of Assets), including any cash or working capital of Transferor, and all accounting or general ledger records of Transferor.

In no event shall any Excluded Assets be included within, or constitute, Assets for the purposes of this Agreement.

2.3 Transferee's Liabilities. On the Closing Date, Transferee shall assume and be responsible and liable for (i) all obligations and liabilities related to, arising from or associated with ownership, occupancy, use or operation of the Assets from and after the Closing (other than Excluded Liabilities) and (ii) the following obligations and liabilities (collectively, "***Transferee's Liabilities***"):

(a) Environmental Liabilities. Subject to and except for Transferor's obligations pursuant to Section 2.4(d) (Excluded Liabilities): (i) responsibility for compliance and liability for any non-compliance by the Assets with Environmental Laws (including fines, penalties and costs to correct); (ii) all Environmental Conditions and Remediation thereof; (iii) responsibility and liability for all Hazardous Substances, and Remediation thereof, present in, on or incorporated into the improvements, buildings, structures, fixtures or equipment which constitute the Assets or which are otherwise located on or have migrated from the Transferred Real Property, including responsibility and liability for: (1) bodily injury to any Person or damages to any property or natural resources to the extent arising from exposure to or release of such Hazardous Substances and Remediation thereof and (2) any Hazardous Substances present in, on, under or about, or incorporated into any drums, equipment or debris that were discarded or abandoned and buried in the ground at the Transferred Real Property or any portion thereof; (iv) liability arising from the ownership, possession, use or operation of equipment, fixtures, structures, surface impoundments or any other improvement at the Transferred Real Property, or at owned or leased adjacent properties, used for the treatment, storage, handling or disposal of Hazardous Substances; and (v) except to the extent provided in Section 2.4(h) (Excluded Liabilities), any obligation to decommission, deactivate, dismantle, demolish or close the Facilities or any portion thereof, or any surface impoundments or other

waste or effluent handling or storage units on owned or leased adjacent properties used in connection with the operation of the Facilities and, in the case of any of subsections (i) through (v) above, whether occurring, existing or arising on, before or after the Closing (collectively, "*Environmental Liabilities*").

(b) Disposal of Radioactive Materials. Responsibility for compliance, and liability for non-compliance, with all Requirements of Laws relating to the use, handling and disposal of radioactive materials, including obligations under the Nuclear Waste Policy Act of 1982 and Transferor's obligations under the Contract for Disposal of Spent Nuclear Fuel and/or High Level Radioactive Waste with the United States Department of Energy (including its obligation to pay a one-time fee plus interest to the date of payment for nuclear generation through April 6, 1983).

(c) Decommissioning. Responsibility for decommissioning the Stations in compliance with all Requirements of Laws, including responsibility for establishing, maintaining and funding (except to the extent, and only to the extent, otherwise provided in Section 6.6 (Decommissioning Costs)) such financial assurance mechanisms as shall be required to provide for such decommissioning under such Requirements of Laws.

(d) Compliance Liabilities. Obligations to comply with, and all liabilities connected with or arising out of, the permits, licenses, exemptions, allowances, approvals and other items (including applications) listed in Schedule 2.1(c) (Specific Permits, Licenses and Variances) and other permits, licenses, exemptions, allowances and approvals obtained or required in connection with the Assets, including the obligations and liabilities arising from or related to emission and discharge allowances, any zoning, land use, building, construction, demolition, setback and subdivision permits, licenses, approvals and authorizations, and the obligation to cure any violation or default under any of the foregoing and pay any resultant penalties, irrespective of whether such violation or default arose or occurred prior to the Closing Date.

(e) Permit Renewals. Obligations and liabilities under any amendments, modifications, extensions or renewals of any existing permits, variances, certificates, licenses, consents, authorizations and approvals relating to the Assets.

(f) Assigned Liabilities. Obligations and liabilities under the Assigned PPAs, the Assigned Leases and the Assigned Contracts relating to the period from and after the Closing Date.

(g) Employment-Related Obligations. All employment-related obligations and liabilities (including obligations and liabilities for workers compensation claims and under Employment Laws) to employees of Transferor that in connection with the transaction contemplated herein are subsequently

employed by Transferee or one of its Affiliates (other than Transferor) arising or relating to the period from and after the Closing Date.

(h) Other Specified Liabilities. All other obligations and liabilities allocated to Transferee in this Agreement.

2.4 Excluded Liabilities. Transferee shall not assume or be obligated to pay, perform or otherwise discharge the following excluded obligations and liabilities (collectively, the "***Excluded Liabilities***"):

(a) Obligations and liabilities of Transferor in respect of any Excluded Assets or other assets of Transferor which are not Assets (other than obligations or liabilities relating to Environmental Liabilities, the use, handling or disposal of radioactive materials, or described in any subsection below);

(b) Obligations and liabilities of Transferor under any of the Assigned PPAs, Assigned Leases or Assigned Contracts relating to the period prior to the Closing Date (other than obligations or liabilities relating to (i) Environmental Liabilities or the use, handling or disposal of radioactive materials and (ii) any unused minimum take or pay obligation under any such Assigned PPA, Assigned Lease, Assigned Fuel Contract or Assigned Other Contract);

(c) Obligations and liabilities for personal injury or property loss or damages (but only to the extent the alleged personal injury or property loss or damage occurred before the Closing Date) resulting from or arising out of the ownership or operation of the Assets by Transferor prior to the Closing Date (other than obligations or liabilities relating to Environmental Liabilities, the use, handling or disposal of radioactive materials, exposure to nuclear hazards, or described in subsection (d) below);

(d) Obligations and liabilities resulting from or arising out of any arrangement by Transferor for the treatment or disposal of any Hazardous Substance generated by the operation of the Facilities at any Off-Site Disposal Location, to the extent such treatment or disposal occurred prior to the Closing Date; provided that, for any obligation or liability related to an Off-Site Disposal Location that was used by Transferor prior to Closing and by Transferee on and after the Closing, this Excluded Liability shall include only that portion of any resulting liability that is attributable to Transferor's pre-Closing use of such Off-Site Disposal Location;

(e) Any fines or penalties imposed by a Governmental Authority to the extent resulting from acts or omissions of Transferor prior to the Closing Date (other than relating to Environmental Liabilities or the use, handling or disposal of radioactive materials);

(f) All liabilities and obligations of Transferor or any of its Affiliates (or any of their respective predecessors-in-interest) for any Taxes due or becoming due by reason of the ownership, possession, use, operation, purchase, acquisition, sale or disposition, of any of the Assets and relating to the period prior to Closing or otherwise relating to the consummation of the transactions contemplated herein, including (i) Taxes attributable to employee withholding tax obligations, (ii) Taxes imposed on, or accruing as a result of the contribution of the Assets and (iii) Taxes attributable to, or resulting from, recapture of depreciation, other tax benefit items, or otherwise arising from the transactions contemplated by this Agreement; and

(g) Except as otherwise provided in the preceding clauses (a) through (g) of this Section 2.4 (Excluded Liabilities), all liabilities and obligations to the extent relating to, or based upon events or conditions occurring or existing in connection with, or arising out of, any and all assets, properties, rights and interests which are not being acquired by Transferee hereunder, including the Excluded Assets.

2.5 Assignability and Consents.

(a) Required Consents. Schedule 2.5(a) (Required Consents) sets forth a list of all necessary approvals of any Governmental Authority whose approval is required for the transactions contemplated by this Agreement.

(b) Nonassignable Items. Anything in this Agreement to the contrary notwithstanding, this Agreement shall not constitute an agreement to sell, convey, assign, sublease or transfer any Asset, including contracts, permits and lease agreements, if an attempted conveyance, assignment, sublease or transfer thereof, without the Consent of another party or a Governmental Authority would constitute a breach or violation of any Requirement of Law or any Asset, or in any way affect the rights of Transferor or Transferee with respect to any Asset ("**Nonassignable Items**"). Transferor shall use Commercially Reasonable Efforts, and Transferee shall cooperate in all reasonable respects with Transferor, to obtain and satisfy all Consents and to resolve all impracticalities of conveyance, assignment, sublease or transfer necessary to convey to Transferee all Nonassignable Items.

2.6 Illinois Responsible Property Transfer Act. Transferor and Transferee acknowledge that: (a) they are fully aware of the purpose and intent of the Illinois Responsible Property Transfer Act (765 ILCS 90/1 et seq.) ("**IRPTA**") and the disclosure document called for by IRPTA and agree to comply with IRPTA; (b) they knowingly and voluntarily waive the requirement that the disclosure document be delivered at least 30 days before the contribution and transfer of assets contemplated by this Agreement and agree that the disclosure document may be delivered at Closing; and (c) Transferee further waives any and all rights it may have under IRPTA and agrees that the rights and remedies pursuant to this Agreement shall be the sole rights and remedies available to it relating to environmental matters or the presence of any Environmental Condition on the Transferred Real Property.

ARTICLE III: CLOSING

3.1 Closing. As used in this Agreement, the "**Closing**" shall mean the time at which Transferor contributes, assigns, transfers and delivers the Assets to Transferee as provided herein by the execution and delivery by Transferor of the documents and instruments referred to in Section 3.2 (Documents to be Delivered by Transferor) against delivery by Transferee of the documents provided in Section 3.3 (Documents to be Delivered by Transferee), and delivery by Transferor, Transferee and the other Persons referred to herein of the additional documents referred to in Section 3.4 (Other Documents to be Delivered). In the absence of a prior termination of this Agreement by one or both of the parties in accordance with Article VII (Termination), and subject to the satisfaction or waiver of the conditions to the parties' respective obligations set forth in Article V (Conditions to Closing), the Closing shall take place at the offices of Sidley & Austin, Bank One Plaza, 10 South Dearborn Street, Chicago, Illinois at 10:00 A.M. on such date as shall be mutually agreed upon in writing by the parties hereto (the "**Closing Date**"). Legal title, equitable title and risk of loss with respect to the Assets shall not pass to Transferee until the Assets are contributed and transferred at the Closing, which contribution and transfer, once it has occurred, shall be deemed effective for tax, accounting and other computational purposes as of 12:01 a.m. (Chicago time) on the Closing Date. All items subject to proration shall be prorated as of the Closing Date on an equitable basis.

3.2 Documents to be Delivered by Transferor. At the Closing, Transferor shall deliver to Transferee:

- (a) a certificate of the Secretary or an Assistant Secretary of Transferor as to (i) its restated articles of incorporation, as amended, (ii) its by-laws, as amended, and (iii) resolutions of its Board of Directors authorizing and approving this Agreement and all other transactions and agreements contemplated hereby;
- (b) an Officer's Certificate (as defined in Section 5.1(e) (Conditions to Transferee's Obligations—Certificate of Transferor)) required by Section 5.1(e);
- (c) copies of all Consents, including an order of the ICC under the Illinois Public Utilities Act, the Federal Energy Regulatory Commission under the Federal Power Act and the Nuclear Regulatory Commission under the Atomic Energy Act;
- (d) releases, including termination statements under the Uniform Commercial Code of any financing statements filed against any Assets in connection with the Mortgage, evidencing discharge, removal and termination of the Mortgage as to the Assets;
- (e) a bill of sale and instrument of assignment transferring the Assets to Transferee, free and clear of any and all liens, claims, mortgages or encumbrances whatsoever (collectively, "**Liens**"), other than Permitted Encumbrances;
- (f) the Grant Deeds conveying the Transferred Real Property to Transferee, free and clear of all Liens except for Permitted Encumbrances;

(g) at Transferor's expense, current title commitments for the Transferred Land, showing ownership thereof in Transferor subject only to Permitted Encumbrances;

(h) at Transferor's expense, current land surveys of the Transferred Land certified by a licensed Illinois land surveyor;

(i) instruments of assignment to Transferee of all trademarks, trade names, service marks and patents (and all applications for, and extensions and reissuances of, any of the foregoing and rights therein) that comprise any of the Assets;

(j) any agreements, instruments of assignment or funds transfers necessary to transfer the investments and funds held in the Decommissioning Trusts from Transferor to Transferee;

(k) any deeds, easement agreements, leases, licenses or other agreements in form and substance reasonably satisfactory to Transferee pursuant to which Transferor shall grant and/or convey to Transferee certain real property or other property and/or certain rights in, to or over real property or other property owned by Transferor which are necessary to the operation of the generating facilities, as identified by the parties prior to Closing; and

(l) Such other deeds, bills of sale, endorsements, assignments, affidavits, and other good and sufficient instruments of sale, assignment, conveyance and transfer in form and substance satisfactory to Transferee, as are required to effectively vest in Transferee title in and to all of the Assets, free and clear of any and all Liens other than Permitted Encumbrances.

3.3 Documents to be Delivered by Transferee. At the Closing, Transferee shall deliver to Transferor:

(a) a certificate of the Secretary or an Assistant Secretary of Transferee as to (i) its articles of incorporation, as amended, (ii) its by-laws, as amended, and (iii) resolutions of its Board of Directors authorizing and approving this Agreement and all other transactions and agreements contemplated hereby;

(b) an Officer's Certificate as required by Section 5.2(e) (Conditions to Transferor's Obligations—Certificate of Transferee);

(c) an instrument of assumption of the Assumed Liabilities; and

(d) any deeds, easement agreements, leases, licenses or other agreements in form and substance reasonably satisfactory to Transferor pursuant to which Transferee shall grant and/or convey to Transferor certain rights in, to or over the Transferred Real Property or otherwise with respect to the Assets which are necessary to Transferor's operations following the Closing (including the operation of the synchronous condensers located at Zion Station), as identified by the parties prior to Closing.

3.4 Other Documents to be Delivered. At the Closing, Transferor and Transferee shall execute and deliver:

- (a) a Power Purchase Agreement generally in the form attached as Exhibit 3.4(a);
- (b) a Facilities, Interconnection and Easement Agreement(s) for each of the Stations (other than Zion Station) generally in the form attached as Exhibit 3.4(b);
- (c) a Facilities and Easement Agreement for Zion Station generally in the form attached as Exhibit 3.4(c);
- (d) any real estate transfer tax declarations required to be executed or filed in connection with the transfer of the Assets; and
- (e) any other documents or instruments reasonably requested by either party in order to consummate the transactions contemplated herein or as may be required to be delivered pursuant to a Requirement of Law.

In addition, Transferor shall execute and deliver an affidavit made under penalty of perjury that provides Transferor's United States Taxpayer Identification Number and states that Transferor is not a foreign person for purposes of Section 1445 of the Code.

ARTICLE IV: REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties of Transferor. Subject only to those exceptions and qualifications listed and described (including an identification by section reference to the representations and warranties to which such exceptions and qualifications relate) on the disclosure schedule delivered at or prior to the Closing (the "**Disclosure Schedule**"), Transferor hereby represents and warrants to Transferee that:

(a) Organization and Standing; Power and Authority. Transferor is a corporation duly organized, validly existing and in good standing under the laws of the State of Illinois, and has full corporate power and authority to own, lease and operate the Assets, to carry on the operations associated with the Assets as now being conducted, and to enter into and perform this Agreement and the transactions and other agreements and instruments contemplated by this Agreement. This Agreement and all other agreements and instruments executed and delivered or to be executed and delivered by Transferor in connection herewith (collectively, the "**Transaction Documents**") have been, or upon execution thereof will be, duly executed and delivered by Transferor, as the case may be. The Transaction Documents have been duly approved by all necessary corporate action on behalf of Transferor, and constitute the valid and binding obligations of Transferor, enforceable against Transferor in accordance with their respective terms.

(b) Conflicts; Defaults. Neither the execution and delivery of this Agreement or any of the other Transaction Documents, nor the performance by Transferor of the

transactions contemplated hereby or thereby, will (i) violate, conflict with, or constitute a default under, any of the terms of Transferor's Restated Articles of Incorporation or By-Laws, or any provisions of, or result in the acceleration of any obligation under, any contract, sales commitment, license, purchase order, security agreement, mortgage, note, deed, lien, lease, agreement or instrument, including the Assigned PPAs, the Assigned Leases, the Assigned Fuel Contracts and the Assigned Other Contracts, or any order, judgment or decree, relating to the Assets, or by which the Assets are bound, (ii) result in the creation or imposition of any Liens in favor of any third Person or entity upon any of the Assets, (iii) violate any law, statute, judgment, decree, order, rule or regulation of any Governmental Authority, (iv) constitute an event which, after notice or lapse of time or both, would result in such violation, conflict, default, acceleration, or creation or imposition of Liens, or (v) constitute an event which, after notice or lapse of time or otherwise would create, or cause to be exercisable or enforceable, any option, agreement or right of any kind to purchase any of the Assets. Transferor is not in violation of or in default under its Restated Articles of Incorporation or By-laws, or any material provision of any contract, sales commitment, license, purchase order, security agreement, mortgage, note, deed, lien, lease, agreement or instrument, or any order, judgment or decree, relating to the Assets, or by which Transferor or the Assets is bound, or in the payment of any of Transferor's monetary obligations or debts relating to the Assets, and there exists no condition or event which, after notice or lapse of time or both, would result in any such violation or default.

4.2 Representations and Warranties of Transferee. Transferee represents and warrants to Transferor that:

(a) Organization and Standing; Corporate Power and Authority. Transferee is a corporation duly organized, validly existing and in good standing under the laws of the [Commonwealth of Pennsylvania], and has full corporate power and authority to make and perform this Agreement, and to perform the transactions contemplated by this Agreement. This Agreement and all other agreements and instruments executed and delivered by Transferee in connection herewith have been duly executed and delivered by Transferee. This Agreement and the transactions and other agreements and instruments contemplated by this Agreement have been duly approved by all necessary corporate action on behalf of Transferee, and constitute the valid and binding obligations of Transferee, enforceable against Transferee in accordance with their respective terms.

(b) Conflicts; Defaults. Neither the execution and delivery of this Agreement by Transferee, nor the performance of its obligations hereunder, will conflict with or constitute a default under any of the terms of Transferee's Articles of Incorporation, as amended, or Bylaws.

ARTICLE V: CONDITIONS TO CLOSING

5.1 Condition to Parties' Obligations. The obligation of the parties to consummate the transactions provided for in this Agreement is subject to the consummation of the transactions contemplated by the Amended and Restated Agreement and Plan of Exchange and